



# PUBLIC NOTICE

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## WIRELESS TELECOMMUNICATIONS BUREAU AND PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCE TEMPORARY FILING FREEZE ON THE ACCEPTANCE AND PROCESSING OF PART 90 APPLICATIONS FOR CERTAIN 5850-5925 MHZ (5.9 GHZ BAND) SPECTRUM

### ET Docket No. 19-138

By this *Public Notice*, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau (Bureaus) announce a temporary freeze, effective on December 19, 2019, on the acceptance and processing of new and expanded use applications related to part 90 services operating in certain portions (specifically, 5850-5895 MHz and 5905-5925 MHz) of the 5850-5925 MHz spectrum band (5.9 GHz band), and on the processing of applications to renew part 90 licenses in the 5.9 GHz band.

On December 17, 2019, the Commission issued a *Notice of Proposed Rulemaking* that sought comment on proposals to amend parts 15 and 90 of its rules to repurpose the 5850-5895 MHz portion of the 5.9 GHz band to support high-throughput broadband applications and re-designate the 5905-5925 MHz portion of the band for Cellular Vehicle to Everything (C-V2X) operations.<sup>1</sup> The Commission also sought comment on whether to authorize C-V2X operations in the 5895-5905 MHz portion of the 5.9 GHz band or continue to reserve that spectrum for Dedicated Short Range Communications (DSRC) operations.<sup>2</sup> Consequently, the Bureaus now suspend the acceptance and processing of applications for new and expanded use of the 5850-5895 MHz and 5905-5925 MHz portions of the 5.9 GHz band. The purpose of this freeze is to stabilize the 5.9 GHz spectrum landscape by suspending the acceptance and processing of applications in these portions of the band while the Commission considers future use of the band and continues to solicit comments from interested parties.

Imposition of the freeze is procedural and, therefore, not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.<sup>3</sup> We find good cause for not delaying the effective date of the freeze pending publication of this *Public Notice* in the Federal Register because delay would undermine the purpose of the freeze, which is to ensure that an influx of applications does

<sup>1</sup> *Use of the 5.850-5.925 GHz Band*, ET Docket No. 19-138, Notice of Proposed Rulemaking, FCC 19-129, at 6, 11, paras. 11, 24 (Dec. 17, 2019).

<sup>2</sup> *Id.* at 12-13, para. 28.

<sup>3</sup> See 5 U.S.C. § 553(b)(A), (d); see also, e.g., *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637-38 (D.C. Cir. 1984) (holding that the Commission's filing freeze is a procedural rule not subject to the notice and comment requirements of the Administrative Procedure Act); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948, 952-53 (6th Cir. 1971); *Kessler v. FCC*, 326 F.2d 673, 680-82 (D.C. Cir. 1963).

not compromise the Commission's flexibility to modify the current uses of the band to the extent that the public interest may warrant.<sup>4</sup>

**Affected services and spectrum.** The suspension of filing and processing imposed by this *Public Notice* applies to applications pertaining to new or expanded DSRC Service Roadside Unit location registrations in the Intelligent Transportation Service (Public Safety radio service code IQ and non-Public Safety radio service code QQ) that operate in the 5850-5895 MHz and/or 5905-5925 MHz portions of the 5.9 GHz band.

**Affected applications.** Effective immediately and until further notice, the Bureaus will not accept or process: (1) applications to modify Intelligent Transportation Service geographic licenses by adding or changing DSRC Roadside Unit locations that operate in the 5850-5895 MHz and/or 5905-5925 MHz portions of the 5.9 GHz band; (2) applications to modify existing licenses by changing technical parameters that expand a station's spectral or geographic footprint in the 5850-5895 MHz and/or 5905-5925 MHz portions of the 5.9 GHz band such as, but not limited to, increases in bandwidth, power, or antenna height, or changes in frequency; and (3) any other application that would substantially alter the licensing landscape in the 5850-5895 MHz and/or 5905-5925 MHz portions of the 5.9 GHz band, excluding, as explained more fully below, certain applications that are minor, ministerial, or otherwise have limited actual effect on the licensing landscape. Accordingly, affected applications for the specified services in the 5850-5895 MHz and/or 5905-5925 MHz portions of the 5.9 GHz band may not be filed during the freeze. Any such applications that are filed on or after the date of this *Public Notice* will be dismissed without prejudice. Pending applications that do not pertain exclusively to the 5895-5905 MHz portion of the 5.9 GHz band will not be processed until further notice; however, defective applications and applications in return status that are not timely resubmitted will be dismissed.<sup>5</sup>

The freeze does not apply to applications that would not substantially alter the current licensing landscape in the 5850-5895 MHz and/or 5905-5925 MHz portions of the 5.9 GHz band, including: (1) modification applications to delete Roadside Unit locations; (2) modification applications to change technical parameters that do not expand a station's spectral or geographic coverage (*e.g.*, decreased bandwidth, power, or antenna height); (3) applications to assign or transfer existing licenses (including consummation notices and requests for extension of time to consummate previously granted license assignment and transfer applications); (4) notices of construction; (5) applications to cancel licenses; and (6) applications for special temporary authority for short-term operations.

In addition, the following applications will continue to be accepted and processed: (1) applications for new Intelligent Transportation Service geographic licenses; (2) applications to register new DSRC Roadside Unit locations that operate or are proposed for operation exclusively in the 5895-5905 MHz portion of the 5.9 GHz band; and (3) applications to modify existing licenses by changing technical parameters that expand a station's spectral or geographic footprint only in the 5895-5905 MHz portion of the 5.9 GHz band.<sup>6</sup>

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<sup>4</sup> See 5 U.S.C. § 553(d)(3).

<sup>5</sup> Applicants and potential applicants may have recourse to the waiver provisions of section 1.925 of the Commission's rules, 47 CFR § 1.925, to request an exception to the filing freeze. Parties preparing a waiver request should carefully review the rule's waiver criteria and include complete support, including but not limited to documentation demonstrating that they meet the criteria set out in the rule.

<sup>6</sup> Note that control channel 178 (5885-5895 MHz) will not be assigned to new DSRC Roadside Unit locations or to locations that are modified by changing technical parameters that move or expand the station's geographic footprint.

The Bureaus will accept properly and timely filed applications to renew geographic licenses but will not process them if the license has any registered DSRC Roadside Unit locations that are authorized to operate in the 5850-5895 MHz and/or 5905-5925 MHz portions of the 5.9 GHz band. Licensees whose timely renewal applications remain pending may continue to operate under the terms of their license until further notice.<sup>7</sup>

The continued acceptance and processing of applications for new, expanded, or renewed use of the 5895-5905 MHz portion of the 5.9 GHz band is without prejudice to any action that the Commission may take in the pending rulemaking proceeding regarding the 5.9 GHz band.

Action by the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau.

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<sup>7</sup> 47 CFR § 1.62(a)(1).